

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit S-35819, Water Right Application S-48146,) PROPOSED FINAL ORDER
in the name of the City of Adair Village)

Permit Information

Application File S-48146/ Permit S-35819

Basin 2 – Willamette Basin / Watermaster District 16

Date of Priority: July 7, 1971

Authorized Use of Water

Source of Water: Willamette River, a tributary of Columbia River
Purpose or Use: Municipal Use
Maximum Rate: 82.0 Cubic Feet per Second (cfs)

**This Extension of Time request is being processed in accordance with Oregon
Administrative Rule Chapter 690, Division 315.**

***Please read this Proposed Final Order in its entirety as it contains
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit S-35819, water right Application S-48146. A copy of Permit S-35819 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1995 to October 1, 2050.
- Grant an extension of time to apply water to full beneficial use from October 1, 1995 to October 1, 2050.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

City – City of Adair Village

County – Polk County

JWC – Joint Water Commission

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

UBG – Urban Growth Boundary

WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second

mgd – million gallons per day

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension to complete construction or perfect a water right. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use. Under specific circumstances, the Department may condition extensions of time for municipal water use permit holders to provide that use of the undeveloped portion of the permit maintains the

persistence of listed fish species in the portions of the waterways affected by water use under the permit.

OAR 690-315-0090(3) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a WMCP Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

Background

1. Permit S-35819 was granted by the Department to the City of Albany on May 15, 1972. On June 1, 1978, the City of Albany assigned all of its interest in the water right to the City of Adair Village. The permit authorizes the use of up to 82.0 cfs of water from the Willamette River, a tributary of the Columbia River for municipal use. It specified that construction of the water development project was to be completed by October 1, 1974, and that complete application of water was to be made on or before October 1, 1975.
2. Four prior permit extensions have been granted for Permit S-35819. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1995.
3. Due to an ongoing permit extension rulemaking, in 1998 the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
5. On October 3, 2000, City of Adair Village (City) submitted an "Application for Extension of Time" to the Department requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit S-35819 be extended from October 1, 1995 to October 1, 2045.
6. Notification of the City's Application for Extension of Time for Permit S-35819 was published in the Department's Public Notice dated April 22, 2003. No public comments were received regarding the extension application.
7. On April 11, 2003, January 6, 2005, and October 13, 2009, the City submitted additional information to supplement their Application for Extension of Time.
8. On February 15, 2012, the permit holder submitted additional information to supplement their Application for Extension of Time and requested the extended time to complete

construction be changed from October 1, 2045 to October 1, 2050, and the extended time to apply water to full beneficial use be changed from October 1, 2045 to October 1, 2050.

Review Criteria for Municipal and Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080(1). This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

Complete Extension of Time Application [OAR 690-315-0080(1)(a)]

9. On October 3, 2000, the Department received a completed application for extension of time and the fee specified in ORS 536.050.

Start of Construction [OAR 690-315-0080(1)(b)]

10. Permit S-35819 was issued prior to June 29, 2005; therefore, the permit holder is not required to provide evidence of actions taken to begin actual construction of the project.⁴

Duration of Extension [OAR 690-315-0080(1)(c) and (1)(d)]

Under OAR 690-315-0080(1)(c) and (1)(d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

11. The remaining work to be accomplished under Permit S-35819 consists of constructing a new intake and treatment facilities, constructing a new pretreatment, clearwell and water treatment equipment, replacing Voss Hill Reservoir with two standpipes, replacing the intake pump and control equipment, replacing the intake piping and transmissions lines, and adding service connections; and completing construction and applying water to full beneficial use.
12. The permit holder has not diverted any of the 82.0 cfs of water authorized under Permit S-35819 for municipal purposes. There is an undeveloped portion of 82.0 cfs of water under Permit S-35819 as per OAR 690-315-0010(6)(g).
13. In addition to the 82.0 cfs of water authorized under Permit S-35819 the City of Adair Village holds municipal use water right Certificate 28782 for 3.0 cfs of water from the Willamette River.
14. The City's peak water demand was 1.1 cfs in 2006.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

⁴ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(1)(d).

15. The City anticipates having a peak water demand of 3.42 cfs by 2026. The City has estimated that by 2050, it will need an additional 7.7 cfs to meet projected new industrial demands on its 128 acres of land currently zoned for industrial use. As a result, the City anticipates a total demand of 11.12 cfs by 2050. Although additional water demands after 2026 for other than industrial purposes were not included in its demand projections, the City indicated that it would likely expand its urban growth boundary (UGB) to include an additional 34.5 acres originally included in its previous proposed UGB expansion.
16. According to Appendix G of the City's 2008 Water System Master Plan Update, Benton County and the City of Adair Village have adopted an average annual growth rate of 5.84 percent inside of the UGB, which would result in a population of 2,814 in the year 2026. The City has identified an average annual growth rate of 2.07 percent for its service area outside of the UGB, based on growth rates in a Linn-Benton Regional Analysis Study done by ECONorthwest in 1999, and the City's 2000 water master plan. This growth rate was applied to the above-described population served outside of the City's UGB, which would result in an estimated population of 261 in the year 2026. Thus, the City's total population served is projected to be of 3,075 in the year 2026.
17. City of Adair Village has entered into two intergovernmental agreements (IGAs) for supplying water under Permit S-35819. An IGA with the City of Hillsboro allows Hillsboro an exclusive option to enter into an agreement to access up to 56.0 cfs under Permit S-35819 following approval of this extension application. The second IGA is with Polk County (County). Under this agreement, after approval of this permit extension application, the City will provide the County with an offer to enter into a project agreement. As part of the project agreement, the City could supply the County up to 25.0 cfs. The future demand of this water by the City of Hillsboro and Polk County is demonstrated in the findings of facts 18 through 30, below.

City of Hillsboro

18. Hillsboro as a member of the Joint Water Commission (JWC) shares the water supply available under the municipal water rights described below (these water rights are in the name of the City of Hillsboro, and/or are water rights managed and used by members of the JWC and Barney Reservoir Joint Ownership Commission):
 - Certificate 81026 for up to 3.0 cfs of water from Sain Creek, a tributary of Scoggins Creek,
 - Certificate 81027 for up to 2.0 cfs of water from Sain Creek, a tributary of Scoggins Creek,
 - Certificate 67891 for up to 9.0 cfs of water from the Tualatin River, a tributary of the Willamette River,
 - Certificate 85913 for up to 43.0 cfs of water from the Tualatin River, a tributary of the Willamette River,
 - Certificate 85914 for up to 25.0 cfs of water from the Tualatin River, a tributary of the Willamette River,
 - Certificate 85916 for up to 33.0 cfs of water from the Tualatin River, a tributary of the Willamette River,

- Permit S-54737, modified by Permit Amendment T-11151, for 75.0 cfs of water from Scoggins Creek, tributary to the Tualatin River,
 - Certificate 81020 for 38.7 cfs of water from the Middle Fork of the North Fork Trask River and Barney Reservoir (Barney Reservoir), [*storage of 20,000 AF of water from the Middle Fork of the North Fork of the Trask River, authorized under Certificate 81024*], and
 - Certificate 87304 for 13,000 acre feet of stored water from Scoggins Reservoir/Henry Hagg Lake, released from the reservoir, at a rate of up to 70.0 cfs [*storage of water from Scoggins Creek, tributary of the Tualatin River, authorized under Certificate 81149*]. Both the storage and secondary water rights are held by the Bureau of Reclamation (BOR).
19. During periods of peak demand and low flow, the JWC can typically only obtain live flow under Certificates 67891 and 81020, and stored water under the BOR's Certificates 87303 and 87304. Thus, these water rights provide for a maximum authorized rate of 117.7 cfs for all members of the JWC. The City of Hillsboro's share of this water is 35.68 percent, a total of 41.99 cfs.
 20. In 2010, Black and Veatch updated Hillsboro's demand projections as part of Hillsboro's Capital Improvement Water Master Plan and Water Supply Evaluation Project to validate the City's water supply needs. (The analysis was similar to the demand projections described in the JWC's 2009 Water Management Conservation Plan.) The demand projections were based on unit rates for all land use classes, which were developed by considering historic water consumption of various land uses, metered sales records to establish historic unit rates for selected land uses, population projections, and land use planning within Hillsboro's water service area.
 21. Based on the demand projections developed by Black and Veatch, total overall maximum day demand for Hillsboro is estimated at 99.67 cfs in 2050. The City of Hillsboro's projected water demands are developed based on projected land use development and unit demands for each of Hillsboro's customer classes because of the significant amount of industrial water usage (35 to 40 percent of total demand) in Hillsboro's service area and the amount of undeveloped industrial land. Demand projections for the LA Water Cooperative and the Cities of Cornelius and Gaston are included in the Hillsboro demand projections as wholesale customers. The demand projections consider, and are consistent with the types and land uses to be served by the City of Hillsboro. Hillsboro anticipates that continued growth may lead to the extension of urban zoning and its service area into new urban growth areas.
 22. The City of Hillsboro's peak demand of 99.67 cfs in 2050 will be partially met by its 41.99 cfs portion of the JWC's reliable peak season water supply. Hillsboro is estimated, therefore, to have a demand for an additional 57.68 cfs for municipal use by 2050.
 23. According to the JWC's approved WMCP, the City of Hillsboro's population is projected to be 117,000 as of 2050. Hillsboro's projections were developed using population information from multiple sources, including long-range county-wide population projections developed by the Office of Economic Analysis (OEA). The OEA used annual

growth rates adjusted every five years, which have an average annual growth rate of 1.8 percent from 2000 to 2040. The population projection for 2050 was extrapolated at a 1.8 percent annual growth rate from 2040.

24. The City of Adair Village has indicated that its IGA with the City of Hillsboro, which is currently for 56.0 cfs, could be amended to provide Hillsboro with 57.68 cfs to meet its projected 2050 demand.

Polk County

25. The current water supply and future demands for the Polk County water providers were estimated in the Polk County Water Providers Regional Water Needs Assessment, June 2004 (Polk County Report). These water providers include the Cities of Dallas, Monmouth, Independence, Falls City, and Willamina, Luckiamute Water Co-op, Grand Ronde Community Water Association, Rickreall Water Association, Rock Creek Water District, Buell Red Prairie Water District, and Perrydale Water Association. These water rights held by the Polk County water providers are listed in Exhibit 3-1 of the Polk County Report, Section 3-8, on file with the Department.
26. The Polk County Report projected the combined peak day demand for the Polk County water providers to be 35.62 mgd (55.1 cfs) in 2040. The Polk County Report demand projections for the Cities of Dallas, Monmouth and Independence were taken from the "Regional Water Supply Project, Phase 1 and 2, Summary Report (dated February 6, 2003). Estimated per capita consumption data for the remaining Polk County water providers was obtained from water system master plans when available. For water providers that did not have these demands already calculated, water usage estimates were obtained from master plans or water use reporting information. Based on this information and estimates of each water provider's total population served, peak day per capita use was estimated. Table 2-5 of the 2004 Polk County Report provides the combined peak day demand projections for the county water providers.
27. The 2004 Polk County Report also estimated each of the county's water provider's available source capacity based on source capacities and system capacities.⁵ Some capacities were increased over time, while others remained constant. Each water provider's 2040 estimated peak day demand was subtracted from its 2040 estimated available source capacity. The results are summarized in Table 3-3 in the 2004 Polk County Report. The total water supply deficiency was estimated at 12.8 mgd (19.8 cfs) at the median, and 15.8 mgd (24.4 cfs) at the high end, of the medium growth assumption.
28. In October 2010, Polk County received Permit S-54681 for 25.0 cfs of water from the Willamette River, which is intended to meet the County's water providers' above-described supply deficiency. However, water is available under this permit only when identified

⁵ A review of the water rights listed in the 2004 Polk County Report shows that the report overstated the maximum authorized rate for Rickreall's Permit G-11288 and included water rights for uses other than municipal use (Permits S-51165; S-14237; and S-15022/T-10642; and Certificate 14247). As a result, the report likely overstates the county's water supply and may under-report the water supply deficiency.

minimum flows are met at the gage at Salem. As a result, the County's permit may not always be available to meet supply deficiency. The County may, therefore, be able to obtain water from the City of Adair Village during those times.

29. In August 2006, the Cities of Independence and Monmouth each received a water use permit (Permit S-54331 and Permit S-54332, respectively) for the use of 4.46 cfs each from the Willamette River. Each city's permit identifies its place of use as being within that city's service area, but the applications referred to a joint water system. The 2004 Polk County Report estimated that Independence would have a 1.81 mgd (2.80 cfs) and Monmouth would have a 5.78 mgd (8.94 cfs) water supply deficit under the high end of the medium growth assumption. (These permits are not conditioned for the minimum flows at Salem.) Although Independence's permit appears to provide sufficient water supply to meet its estimated 2040 deficit, Monmouth's permit leaves 4.44 cfs of its projected 2040 deficit unmet. If, however, Independence provided Monmouth with additional water supply under its permit, the cities' total 2040 deficit of 11.74 cfs would be reduced to 2.82 cfs. Consequently, after considering the permits issued to Independence and Monmouth in 2006, these cities combined supply deficit should be reduced to 2.82 to 4.44 cfs, depending on how their water system will be operated.
30. If the 15.8 mgd (24.4 cfs) supply deficiency estimated by the 2004 Polk County Report is reduced to reflect the permits issued to Independence and Monmouth in 2006, the County's total estimated supply deficit for municipal uses would be 15.8 to 17.2 cfs, depending on how their joint water system is operated.
31. According to the June 2004 Polk County Report, the 2000 combined population for all water providers within Polk County, except West Salem, was 44,029. (West Salem receives its municipal water supply from the City of Salem, and was excluded from the assessment.) The 2004 Polk County Report increased the populations according to the growth rates provided in each City's water master plan or other planning documents. (See notes for Table 2-1 in the 2004 Polk County Report.) Based on these various growth rates, the total population for the water providers was estimated to be 87,547 by 2040, which equates to a growth rate of 1.7 percent.

Summary

32. The City of Adair Village anticipates a need for 82.0 cfs for municipal use under Permit S-35819 to meet future peak municipal demand by 2050. This total peak demand includes municipal water demands from customers served directly by the City (including industrial demand). It also includes beneficial municipal water use under agreements with the City of Hillsboro and Polk County. The City of Hillsboro is projected to have a demand for up to 57.68 cfs, and Polk County is projected to have a demand for up to 17.2 cfs that could be met by use of water under Permit S-35819.
33. Full development of Permit S-35819 is needed to address the present and future water demand of the City of Adair Village, and to meet their agreements with the City of Hillsboro and Polk County, and includes system redundancy and emergency use.

34. Both the City of Hillsboro and Polk County are outside of the place use authorized by Permit S-35819. However, ORS 540.510(3)(a) allows water use under a permit issued to a municipality to be applied to beneficial use on lands to which the right is not appurtenant if the use continues to be for municipal purposes and would not interfere or impair prior vested water rights.
35. The City's request for an extension of time until October 1, 2050, to complete construction and to apply water to full beneficial use under the terms of Permit S-35819 is both reasonable and necessary.
36. In accordance with OAR 690-315-0080(1)(d) and as described by findings 15, 16, 20, 21, 23, 25 – 27, and 31, the City has demonstrated that the estimated demand projections are consistent with the amount and types of lands and uses proposed to be served.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a), (3)(c) and (4)]

Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

37. The original intake and distribution system was constructed prior to the issuance of Permit S-35819 on May 15, 1972.
38. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame and during prior extensions of time.
39. During the last extension period, being October 1, 1990 to October 1, 1995, the City accomplished the following:
 - Installed fish screens at the diversion, dredged the intake station to remove rock and debris; completed numerous improvements at water treatment plant including replacing valves, most pipes, one pump and generator at the water treatment plant, modernizing the chemical treatment room, installing turbidity meters and other miscellaneous improvements; and made improvements to the backwash system including replacing pump and valves, dredging backwash pond, and installing new drainpipes from backwash ponds to Willamette River.
40. Since October 1, 1995, the City has accomplished the following:
 - Dredged a backwash pond, completed leak analysis, developed a Water Master Plan in 2000, repaired the Hospital Hill Reservoir, and completed Water Master Plan updates in 2006 and 2008.

- The City entered into intergovernmental agreements with the City of Hillsboro and Polk County in 2011, and 2010, respectively.
41. According to the City, as of October 3, 2000, they have invested approximately \$1,038,000, which is 0.3 percent of the total projected cost for complete development of this project. The City estimates a \$329,000,000 investment is needed for the completion of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under S-35819, other costs included in this accounting are not partitioned out for S-35819 because (1) they are incurred under the development of a water supply system that will be jointly utilized under other rights held by the City, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in ORS 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.
 42. Since the issuance of Permit S-35819 on May 15, 1972, the City has not diverted any of the 82.0 cfs allowed for beneficial municipal purposes under the terms of this permit.
 43. The Department has considered the City's compliance with conditions and did not identify any concerns.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose
[OAR 690-315-0080(3)(b)]

44. According to the City, as of October 3, 2000, they have invested approximately \$1,038,000, which is 0.3 percent of the total projected cost for complete development of this project. The City estimates that a \$329,000,000 investment is needed for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d)]

45. As described in Findings 12 through 33 above, the City has indicated, and the Department finds that full development of Permit S-35819 is necessary to meet their demands and a portion of the demands for the City of Hillsboro and Polk County.
46. The City of Adair Village anticipates an annual population growth rate of 5.84 percent per year within the UGB and 2.07 percent per year outside of the UGB, over 42 year period, being the years 2008 to 2050.
47. The City of Hillsboro anticipates variable annual population growth rates that average 1.8 percent per year, over a 50 year period from 2000 to 2050.
48. Polk County anticipates (based on the various projected growth rates within the county) the total population for the water providers to be 87,547 by 2040.
49. Given the current water supply situation of the City, City of Hillsboro and Polk County, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under

Permit S-35819.

50. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any water under Permit S-35819 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit. A “Development Limitations” condition is specified under Item 1 of the “Conditions” section of this PFO to meet this requirement.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

51. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit S-35819.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

52. Delays caused by any other governmental requirements in the development of this project have not been identified.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

53. Delay of development under Permit S-35819 was due, in part, to the size and cost of fully developing the permit.

Maintaining the Persistence of Listed Fish Species [OAR 690-315-0080(1)(f) and (2)]

The Department’s determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.

54. The pending municipal Application for Extension of Time for Permit S-35819 was delivered to ODFW on March 13, 2006, for ODFW’s review under OAR-690-315-0080.
55. Notification that the pending municipal Application for Extension of Time for Permit S-35819 was delivered to ODFW for review was sent to the City on March 15, 2006.
56. Notification that the pending municipal Application for Extension of Time for Permit S-35819 was delivered to ODFW for review was published in the Department’s Public Notice dated March 21, 2006. No public comments were received regarding this notice.
57. On November 16, 2009, the Department received ODFW’s Division 315 Revised Evaluation of Fish Persistence Evaluation for Permit S-35819.

58. Summary and Excerpts of Advice from ODFW:

Use of water under the portion of this permit that is undeveloped as of the date of the extension final order should be conditioned to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit. ODFW has determined that the mainstem Willamette River will be affected by water use under this permit. ODFW’s advice is based on the best available information and existing data.

ODFW recognizes that climatic variations will affect the amount of water the USACE will be able to release in any given year. In favorable water years, fish populations tend to increase and in unfavorable water years, fish populations contract. The long term objective for a listed species is to have the population increase to a sustainable level over time and to be able to maintain itself through natural fluctuations in the environment.

The streamflows, in Table 1, below, are ODFW’s recommended flows measured at Salem, Oregon, for maintaining the persistence of listed fish species in the Willamette River. ODFW advises the Water Resources Department to develop conditions that allow municipalities to meet their water needs while maintaining the persistence of listed fish species. Such conditions would apply if the USACE is not able to maintain the recommended fish flows.

The severity of the measures to be taken by the permit holder should reflect the degree to which the recommended streamflows are being missed and the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level, and be adjusted by the ratio of water withdrawn to water being returned directly to the Willamette River through effluent discharges.

Table 1

ODFW’S RECOMMENDED MINIMUM FISH FLOW NEEDS ON THE WILLAMETTE RIVER MEASURED AT SALEM, OREGON	
Month	Cubic Feet per Second
July 1 – October 31	5,630
November 1 – March 31	6,000
April 1 – April 15	15,000 – 19,200
April 16 – April 30	17,000
May 1 – May 31	15,000
June 1 – 15	12,600
June 16 – 30	8,500

Streamflow Measurement Point

After analysis of flow records and how the USACE stores and releases water from its facilities to meet mainstem Willamette target flows, ODFW has determined that measuring flows at the Salem gage is sufficient for ensuring that flows to maintain the persistence of listed fish species are met throughout the mainstem Willamette River. Therefore, ODFW advises the Department to establish the Salem gage as the point for determining whether fish flows are being met for this municipal permit extension.

59. Department's Findings Based on Review of ODFW's Advice:

The Department is proposing conditions in this extension of time consistent with ODFW's advice (*See* Item 1 of the "Conditions" section of this PFO). There is an undeveloped portion of 82.0 cfs of water under Permit S-35819 as per OAR 690-315-0010(6)(g). Use of any water under this permit can only be authorized through the Department's review and approval of future WMCP(s) (OAR 690-086) which grants access to water under this extended permit. When ODFW's recommended target flows are missed, the Department's proposed conditions may result in a reduction in the amount of the undeveloped portion of water under Permit S-35819 that can be diverted. The conditions are based on the following findings:

- a. The Willamette River streamflows needed to maintain the persistence of fish must be measured at Salem, Oregon, USGS GAGE No.14191000, or its equivalent.
- b. During the month of April, the target flow is expressed as a range. Because these flows are the "Recommended Fish flow Minimums" the lesser number in the range (for example, 15,000 cfs in the month of April) is used in developing conditions to maintain the persistence of fish species.
- c. When target flows are not met, use of the undeveloped portion of the permit may need to be reduced in proportion to the degree to which the recommended streamflows are being missed. The formula for determining the percent shortfall, or missed target flows in the Willamette River is defined as:

$$1 - (Q / Q_T),$$

where Q is the flow at the point of interest, and Q_T is the target flow (from Table 1).

- d. For the period of April through June, ODFW's advice recognized that the main influence on river flow levels is federal management of the dams and release of surplus storage water to meet listed fish flow needs. The advice also noted that withdrawal of water in the spring months will have minimal overall impact on streamflows. The full use of the undeveloped portion of Permit S-35819 represents from 0.5 to 0.9 percent of the April-June streamflows in the Willamette River at Salem.
- e. For the period of July through October, ODFW's advice recognized that the main influence on river flow levels continues to be the federal management of the dams. While the advice noted that withdrawal of water in these summer-fall

months will have a proportionally greater effect on flows, it represents an only slightly higher impact compared to the April-June impact; the full use of the undeveloped portion of Permit S-35819 represents 1.5% of the July-October streamflows in the Willamette River at Salem.

- f. ODFW's advice recognizes that municipalities may return a certain amount of flow to a river or stream through their effluent discharge. If the withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, then ODFW recommends that any reduction to use of the undeveloped portion of Permit S-35819 should be adjusted by the monthly estimated percentage of the difference between the total water withdrawals and their return flows. The point of diversion and return flow for the City of Adair Village are both located at river mile 122.0. ODFW has determined that return flows are within reasonable proximity to the point of diversion and that fish habitat between the two points will not be impacted. Therefore, consistent with ODFW's advice, when appropriate, the Department proposes to adjust any reduction by a "Consumptive Use Percentage," as generally determined by $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$.
 - g. Consistent with ODFW's advice that the main influence of river flow levels is the federal management of the dams and that the severity of the measures to be taken by the permit holder should reflect the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level, the Department proposes to limit any overall reduction to no more than 20 percent of the of the undeveloped portion.
60. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-35819 will not maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit, and as a result of the use of the undeveloped portion of the permit, streamflows would be a limiting factor for the listed fish species.
61. Based on ODFW's advice, the Department proposes to require conditions to maintain the persistence of fish species listed as sensitive, threatened or endangered under state or federal law, in the portions of the waterways affected by water use under Permit S-35819. (See Item 2 of the "Conditions" section of this PFO.)⁶
62. On May 17, 2012, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-35819 are consistent with their advice.
63. On May 21, 2012, the Department notified the City as per OAR 690-315-0080(2)(f) of

⁶ The Department, based on advice from the ODFW, has determined that the conditions contained in this PFO are appropriate for this extension. In other municipal extensions that require conditions to maintain the persistence of listed species, different conditions may be warranted depending on the advice received from ODFW and communications with the particular extension applicant.

ODFW's written advice and the "Conditions to Maintain the Persistence of Listed Fish" proposed in this PFO for the pending municipal Application for Extension of Time for Permit S-35819.

CONCLUSIONS OF LAW

1. The City is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(2).
2. The City has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. Pursuant to ORS 540.510(3)(a), water under Permit S-35819 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2050⁷. The estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder(s) pursuant to OAR 690-315-0080(1)(d).
7. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the City has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
8. As required by OAR 690-315-0090(3) and as described in Finding 50, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of any water under Permit S-35819 shall only be authorized upon issuance of a final order approving a

⁷ Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit.

9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 54 through 63, above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by use of the undeveloped portion of this municipal use permit in the absence of special conditions. Therefore, the diversion of any water under Permit S-35819 will be subject to the conditions specified under Item 2 of the “Conditions” section of this PFO.

Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to complete construction under Permit S-35819 from October 1, 1995 to October 1, 2050.

Extend the time to apply the water to beneficial use under Permit S-35819 from October 1, 1995 to October 1, 2050.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any water under Permit S-35819 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit. The required WMCP shall be submitted to the Department within 3 years of an approved extension of time application. Use of water under Permit S-35819 must be consistent with this and subsequent WMCP’s approved under OAR Chapter 690, Division 86 on file with the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

2. Conditions to Maintain the Persistence of Listed Fish

A. Minimum Fish Flow Needs

- a. Minimum fish flow needs on the Willamette River as recommended by ODFW are in Table 2, below; flows are to be measured on the Willamette

River at Salem, Oregon (USGS Gage Number 14191000, or its equivalent).

Table 2

MINIMUM FISH FLOW NEEDS ON THE WILLAMETTE RIVER MEASURED AT USGS GAGE 14191000 SALEM, OREGON	
Month	Cubic Feet per Second
July 1– October 31	5,630
November 1 – March 31	6,000
April 1 – April 15	15,000
April 16 –April 30	17,000
May 1 – May 31	15,000
June 1 – 15	12,600
June 16 – 30	8,500

b. Alternate Streamflow Measurement Point

The location of a steamflow measurement point as established in these Conditions to Maintain the Persistence of Listed Fish may be revised if the City provides evidence in writing that ODFW has determined that persistence flows may be measured at an alternate streamflow measurement point and provides an adequate description of the location of the alternate streamflow measurement point, and the Water Resources Director concurs in writing.

B. Determining Water Use Reductions - Generally

The maximum amount of the undeveloped portion of Permit S-35819 that can be diverted as a result of this fish persistence condition is determined in proportion to the amount by which the flows shown in Table 2 are missed based on a seven day rolling average of mean daily flows measured in the Willamette River at Salem (USGS Gage Number 14191000, or its equivalent). The percent of missed target flows is defined as:

$$(1 - [Q_A / Q_T]) \times 100\%,$$

where Q_A is the actual flow measured at the designated location based on the seven day rolling average⁸, and Q_T is the target flow (from Table 2).

The percent missed target flows applied to the undeveloped portion of the permit provides the maximum amount of undeveloped water that can be diverted as a

⁸ Alternatively, the Adair Village may use a single daily measurement.

result of this fish persistence condition, and is defined as:

$$E - (E \times \% \text{ missed target flows}),$$

where E is the undeveloped portion of the permit as of this extension, being 82.0 cfs.

The maximum amount of undeveloped water that can be diverted as a result of this fish persistence condition may be adjusted by a Consumptive Use Percentage, when applicable, as per Item 2.C., below. Item 2.C. is applicable only to diversions of water at Adair’s point of diversion and return flows at Adair’s effluent discharge point.

The overall reduction to the amount of the undeveloped portion of the permit will not exceed 20%.

When $Q_A \geq Q_T$, the amount of the undeveloped portion of the permit that can be diverted would not need to be reduced as a result of this fish persistence condition.

C. “Consumptive Use Percentages”

a. Initial Consumptive Use Percentages

Initial Consumptive Use Percentages for the City of Adair Village to adjust water use reductions for the purpose of calculating the amount of the undeveloped portion of Permit S-35819 that can be diverted as a result of this fish persistence condition are as shown in the Table 3, below. Utilization of initial Consumptive Use percentages is subject to an approval, described in 2.C.e, below.

Table 3

Month	Initial¹ Consumptive Use Percentage
January	8 %
February	0 %
March	0 %
April	0 %
May	6 %
June	25 %
July	48 %
August	49 %
September	33 %
October	3 %

November	0 %
December	0 %

Use of these initial percentages expires
10 years from the date of the Final Order
for this Extension of Time

b. Continuing Use of Consumptive Use Percentages by Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-35819 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.e, below) is contingent upon the city submitting updated Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages Updates. Utilization of Consumptive Use Percentages Updates is subject to an approval period described in 2.C.e, below.

The updates to the Consumptive Use Percentages must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year, and (2) include a description and justification of the methods utilized to determine the percentages. The updates should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for this extension of time.

c. Changes to Wastewater Technology and/or Wastewater Treatment Plant Practices

If there are changes to either wastewater technology, or the practices at the City's wastewater treatment facility, resulting in 25% or more reductions in average monthly return flows to the Willamette River, then the Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the amount of the undeveloped portion of Permit S-35819 that can be diverted as a result of this fish persistence condition. The 25% reduction is based on a 10-year rolling average of monthly wastewater return flows to the Willamette River as compared to the average monthly wastewater return flows from the 10 year period just prior to date of the first approval period described in 2.C.e., below.

If such changes to either wastewater technology or the practices at the City's wastewater treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the City submitting Consumptive Use Percentages Updates as per 2.C.b., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

d. Relocation of the Point(s) of Diversion(s) and/or Return Flows

If the point(s) of diversion(s) and/or return flows are relocated, Consumptive Use Percentages in effect at that time may no longer be used for the purpose of calculating the amount of the undeveloped portion of Permit

S-35819 that can be diverted as a result of this fish persistence condition.

After relocation of the point(s) of diversion(s) and/or return flows, further utilization of Consumptive Use Percentages is contingent upon the City (1) providing evidence in writing that ODFW has determined that any relocated withdrawal points and effluent discharge points are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting monthly Consumptive Use Percentages Updates as per 2.C.b, above and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

e. Approval Periods for Utilization of Consumptive Use Percentages

The utilization of Consumptive Use Percentages for the purpose of calculating the maximum total amount of the undeveloped portion of Permit S-35551 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that begins from either (1) the date of the Extension Final Order, or (2) 10 years from the Water Resources Director's most recent date of concurrence with Consumptive Use Percentages Updates as evidenced by the record, unless sections 2.C.c, or 2.C.d. (above) are applicable.

Consumptive Use Percentages Updates which are submitted and receive the Director's concurrence will begin a new 10 year approval period. The approval period begins on the date of the Water Resources Director's concurrence with Consumptive Use Percentages Updates, as evidenced by the record. The City at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On July 15, the last seven mean daily flows were 7000, 6500, 6000, 5500, 5250, 5000 and 4750 cfs. The seven day rolling average (Q_A) is 5714 cfs. The amount of the undeveloped portion of the permit that can be diverted would not be reduced because the 7 day average of mean daily flow is greater than the 5,630 cfs target flow (Q_T) for July 15. In this example, $Q_A \geq Q_T$.

Example 2: Target flow missed.

Step 1: If on July 15, the average of the last seven mean daily flows (Q_A) was 5011 cfs, and the target flow (Q_T) is 5630 cfs, then the target flow would be missed by 11%.

$$(100 - [(5011 / 5630) \times 100\%]) = 11\%$$

Step 2: Assuming use of the Consumptive Use Percentage is 48 % during the month of July and the utilization of this percentage is authorized, and the target flow is missed by 11% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 5.3%.

$$([11 \% \times 48 \%] / 100) = 5.3\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, then the undeveloped portion would only be reduced by the % by which the target flow is missed – 11% in this example).

Step 3: The overall reduction of 5.3 % of the amount of the undeveloped portion of the permit does not exceed 20%.

Step 4: The undeveloped portion of this permit as of this extension (E) is 82.0 cfs. Therefore, in this example, the maximum amount of the undeveloped portion of Permit S-35819 that can be diverted as a result of this fish persistence condition is 77.7 cfs.

$$82.0 - ((82.0 \times 5.3\%) / 100) = 77.7$$

Step 5: Given that the entire permit, being 82.0 cfs, is undeveloped, if the amount of water legally authorized for a diversion at a given point in time (for example, authorization provided through a WMCP) is 50.0 cfs, then 50.0 cfs of water would be available for use by the permit holder.


In this example, the 50.0 cfs of undeveloped water is less than the 77.7 cfs maximum undeveloped portion (from Step 4) that can be diverted as a result of this fish persistence condition. Therefore, there would be no required reduction in water use of the undeveloped portion under the permit.

Step 6: If the amount of water legally authorized for a diversion at a given point in time is 80.0 cfs, then of the 82.0 cfs only 80.0 cfs of undeveloped water would be available for use by the permit holder.

In this example, the 80.0 cfs of undeveloped water is greater than the 77.7 cfs maximum undeveloped portion (from Step 4) that can be diverted as a result of this fish persistence condition. Therefore, the amount of undeveloped water diverted by the permit holder would need to be reduced by 2.3 cfs.

$$80.0 - 77.7 = 2.3$$

DATED: June 5, 2012


Dwight French
Water Right Services Division Administrator

*If you have any questions,
please check the information
box on the last page for the
appropriate names and phone
numbers.*

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **July 20, 2012**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

If you have any questions about statements contained in this document, please contact Ann L. Reece at 503-986-0827.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.

If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.

Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
Fax: 503-986-0901 Salem, OR 97301-1266
